

**NY TRANSPORTATION
WORKERS' COMPENSATION TRUST**

AUDITED FINANCIAL STATEMENTS

Years ended December 31, 2011 and 2010

NY TRANSPORTATION WORKERS' COMPENSATION TRUST

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INDEPENDENT AUDITOR'S REPORT

To the Board of Trustees and Members of the
NY Transportation Workers' Compensation Trust

We have audited the accompanying balance sheets of NY Transportation Workers' Compensation Trust (the "Trust") as of December 31, 2011 and 2010, and the related statements of operations, changes in members' deficit, and cash flows for the years then ended. These financial statements are the responsibility of the Trust's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

As discussed in Note 2 to the financial statements, New York State Workers' Compensation Laws impose an asset to liability requirement on group self-insurers, including the Trust. At December 31, 2011, the Trust does not meet the minimum regulatory standards. Also as more fully described in Note 1 to the financial statements, the Trust has terminated its status as a group self-insurer and as of January 1, 2009, the Trust no longer provides workers' compensation coverage and continues to operate in run-off status until all of its claim obligations have been fulfilled. In addition, the Worker's Compensation Board policy regarding cash flow monitoring would permit the Worker's Compensation Board to assume administration of the Trust if projected cash flows fall below specified requirements.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of NY Transportation Workers' Compensation Trust as of December 31, 2011 and 2010, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

UHY LLP

Albany, New York
April 17, 2012

**NY TRANSPORTATION
WORKERS' COMPENSATION TRUST
BALANCE SHEETS
December 31, 2011 and 2010**

| | <u>2011</u> | <u>2010</u> |
|---|----------------------|----------------------|
| ASSETS | | |
| Cash and cash equivalents | \$ 1,599,418 | \$ 1,265,234 |
| Investments | 14,767,406 | 24,207,945 |
| Restricted investments | 1,125,000 | 1,125,000 |
| New York State assessment credits, net | 534,714 | 677,601 |
| Prepaid expenses and other assets | 20,621 | 39,517 |
| Interest receivable | 179,504 | 287,763 |
| Reinsurance recoverable | 5,715,131 | 4,158,697 |
| | <u>5,715,131</u> | <u>4,158,697</u> |
| Total assets | <u>\$ 23,941,794</u> | <u>\$ 31,761,757</u> |
| LIABILITIES | | |
| Reserve for loss and loss adjustment expenses | \$ 45,764,884 | \$ 52,332,351 |
| Uncertain tax position liability | - | 182,000 |
| Accrued expenses | 67,861 | 220,766 |
| | <u>67,861</u> | <u>220,766</u> |
| Total liabilities | 45,832,745 | 52,735,117 |
| MEMBERS' DEFICIT | | |
| Accumulated other comprehensive income | 1,527,528 | 1,885,601 |
| Accumulated deficit | <u>(23,418,479)</u> | <u>(22,858,961)</u> |
| Total members' deficit | <u>(21,890,951)</u> | <u>(20,973,360)</u> |
| Total liabilities and members' deficit | <u>\$ 23,941,794</u> | <u>\$ 31,761,757</u> |

See notes to financial statements.

**NY TRANSPORTATION
WORKERS' COMPENSATION TRUST
STATEMENTS OF OPERATIONS
Years Ended December 31, 2011 and 2010**

| | <u>2011</u> | <u>2010</u> |
|---|---------------------|----------------------|
| Revenues | | |
| Contributions (refunded) earned | \$ (11,911) | \$ 186,270 |
| Ceded premium - excess insurance | - | 7,166 |
| Net contributions (refunded) earned | <u>(11,911)</u> | 193,436 |
| Investment income, net | 1,306,744 | 1,914,281 |
| Other income | 30 | 5 |
| Total revenues | <u>1,294,863</u> | <u>2,107,722</u> |
| Expenses | | |
| Loss and loss adjustment expenses incurred, net of losses recoverable | 1,014,312 | 5,307,245 |
| Management, general and administrative expenses | 666,484 | 724,860 |
| New York State assessments (reduction) | <u>355,585</u> | <u>(25,476,988)</u> |
| Total expenses (reductions), net | <u>2,036,381</u> | <u>(19,444,883)</u> |
| (Loss) Income before income taxes | (741,518) | 21,552,605 |
| Income tax (benefit) expense | <u>(182,000)</u> | <u>23,925</u> |
| Net (loss) income | <u>\$ (559,518)</u> | <u>\$ 21,528,680</u> |

See notes to financial statements.

**NY TRANSPORTATION
WORKERS' COMPENSATION TRUST
STATEMENTS OF CHANGES IN MEMBERS' DEFICIT
Years Ended December 31, 2011 and 2010**

| | <u>Accumulated Other Comprehensive Income</u> | <u>Accumulated Deficit</u> | <u>Total Members' Deficit</u> | <u>Comprehensive Income (Loss)</u> |
|---|---|--------------------------------|---------------------------------------|--|
| Balance at December 31, 2009 | \$ 1,948,519 | \$ (44,387,641) | \$ (42,439,122) | |
| Net income | - | 21,528,680 | 21,528,680 | \$ 21,528,680 |
| Other comprehensive loss | | | | |
| Unrealized net holding gains arising during the year | 466,179 | - | 466,179 | 466,179 |
| Reclassification adjustment for net gains realized during the year | <u>(529,097)</u> | <u>-</u> | <u>(529,097)</u> | <u>(529,097)</u> |
| Total comprehensive income | | | | <u>\$ 21,465,762</u> |
| Balance at December 31, 2010 | 1,885,601 | (22,858,961) | (20,973,360) | |
| Net loss | - | (559,518) | (559,518) | \$ (559,518) |
| Other comprehensive loss | | | | |
| Unrealized net holding gains arising during the year | 27,366 | - | 27,366 | 27,366 |
| Reclassification adjustment for net gains realized during the year | <u>(385,439)</u> | <u>-</u> | <u>(385,439)</u> | <u>(385,439)</u> |
| Total comprehensive loss | | | | <u>\$ (917,591)</u> |
| Balance at December 31, 2011 | <u>\$ 1,527,528</u> | <u>\$ (23,418,479)</u> | <u>\$ (21,890,951)</u> | |

See notes to financial statements.

**NY TRANSPORTATION
WORKERS' COMPENSATION TRUST
STATEMENTS OF CASH FLOWS
Years Ended December 31, 2011 and 2010**

| | <u>2011</u> | <u>2010</u> |
|--|---------------------|---------------------|
| CASH FLOWS FROM OPERATING ACTIVITIES | | |
| Net (loss) income | \$ (559,518) | \$ 21,528,680 |
| Adjustments to reconcile net (loss) income to net cash used in operating activities: | | |
| Amortization of bond premium, net | 17,495 | 37,386 |
| Gain on sale of investments, net | (385,439) | (529,097) |
| Net change in assets and liabilities: | | |
| Contributions receivable | - | 17,581 |
| New York State assessment credits | 142,887 | (677,601) |
| Prepaid expenses and other assets | 18,896 | 111,211 |
| Interest receivable | 108,259 | 159,246 |
| Reinsurance recoverable | (1,556,434) | (1,420,546) |
| Reserve for loss and loss adjustment expenses | (6,567,467) | (3,779,209) |
| Accrued New York State assessments | - | (30,945,705) |
| Uncertain tax position liability | (182,000) | 24,000 |
| Accrued expenses | (152,905) | (85,503) |
| Contributions received in advance and refunds payable | - | (69,192) |
| Net cash used in operating activities | <u>(9,116,226)</u> | <u>(15,628,749)</u> |
| CASH FLOWS FROM INVESTING ACTIVITIES | | |
| Proceeds from investments sold or matured | <u>9,450,410</u> | <u>15,425,844</u> |
| Net cash provided by investing activities | <u>9,450,410</u> | <u>15,425,844</u> |
| Net increase (decrease) in cash and cash equivalents | 334,184 | (202,905) |
| Cash and cash equivalents at beginning of year | <u>1,265,234</u> | <u>1,468,139</u> |
| Cash and cash equivalents at end of year | <u>\$ 1,599,418</u> | <u>\$ 1,265,234</u> |
| SUPPLEMENTAL DISCLOSURE OF CASH FLOWS INFORMATION | | |
| Cash received during the period for income taxes | <u>\$ -</u> | <u>\$ (75)</u> |

See notes to financial statements.

**NY TRANSPORTATION
WORKERS' COMPENSATION TRUST
NOTES TO FINANCIAL STATEMENTS
December 31, 2011 and 2010**

NOTE 1 — ORGANIZATION

The NY Transportation Workers' Compensation Trust (the "Trust") was organized to create a nonprofit unincorporated association of transportation merchants within the State of New York to constitute a workers' compensation self-insurance group under New York State Workers' Compensation Laws Section 50, subdivision 3-a. The Trust, which commenced operations on December 1, 2000, was created to make available a self-insured workers' compensation program for transportation merchants of the State of New York, to establish, maintain, promote and enforce sound safety programs, and to provide a cost-effective market in which transportation merchants may obtain workers' compensation insurance coverage. The Trust is administered by a third party administrator (Note 9).

During 2008, the Board of Trustees voted to voluntarily terminate their status as an active group self-insurer for the Trust effective December 31, 2008, because of changes in New York State Workers' Compensation Laws which adversely affected the Trust's ability to provide workers' compensation coverage to its members without exposing them to financial risks associated with other self-insured groups (Note 9). The plan to terminate was ratified by a vote of the membership on January 29, 2009. The Trust notified the NYS Workers' Compensation Board of its decision to terminate their status on November 25, 2008. Accordingly, as of December 31, 2008, the Trust no longer provides Workers' Compensation coverage. The Trust continues to operate in a run-off status until all of its claim obligations for events that occurred prior to December 31, 2008 have been fulfilled.

The Trust has a contract with a third party administrator through December 2011 to manage the assets and liabilities of the Trust during its run off status. Effective January 1, 2012, the Trust engaged a new third party administrator to provide these services through December 2014 (Note 9).

NOTE 2 — REGULATORY REVIEW AND MANAGEMENT'S PLANS

The Trust is not in compliance with the assets to liabilities ratio as required by New York State Workers' Compensation Law, Section 50, subdivision 3a, Part 317.9 of the regulations, as currently in effect at December 31, 2011. Group Self-insurers (trusts) who do not meet the ratio requirement are deemed under-funded and may be subject to regulatory action by the New York Workers' Compensation Board.

On August 1, 2011, the Worker's Compensation Board (WCB) issued Circular 2011-#5 which stated its policy regarding inactive group self-insurers that have terminated coverage and are in run off status. Group self-insurers are required to submit monthly cash flow reports to the WCB to estimate the number of months the group self-insurer can continue to pay claim obligations. According to WCB policy, if the projected available cash and investments fall below 18 months, the WCB will mandate a deficit assessment be levied on the group self-insurer's members within 3 months. In the event the group self-insurer is unable or unwilling to levy an appropriate assessment, the WCB is authorized to assume administration of the group self-insurer. If projected available cash and investments falls below 9 months, the WCB is authorized to immediately assume the administration of the group self-insurer. Based on the report submitted to the WCB, as of December 31, 2011, according to the WCB's formula, the Trust has indicated it has over 22 months of available cash and investments to pay claim obligations.

**NY TRANSPORTATION
WORKERS' COMPENSATION TRUST
NOTES TO FINANCIAL STATEMENTS
December 31, 2011 and 2010**

NOTE 2 — REGULATORY REVIEW AND MANAGEMENT'S PLANS (Continued)

As of December 31, 2011, the Trust has liabilities in excess of assets totaling \$21,890,951. The Trust's management will closely monitor the claims run off process including the cash flow necessary to meet its obligations. The Trust's management has represented to the Board of Trustees that the Trust has sufficient resources to meet its obligations for at least the next year. If it determines the cash flow is not adequate to meet its current obligations, then the Trust will work with the Workers Compensation Board to determine the best course of action to remedy the situation.

NOTE 3 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements. Estimates also affect the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Cash and Cash Equivalents

The Trust considers cash and cash equivalents to be cash in the bank, money market funds and highly liquid securities with an original maturity of three months or less. From time to time, the Trust has on deposit with certain financial institutions, cash and cash equivalents which exceed the amount subject to federal deposit insurance. The Trust attempts to mitigate this risk by depositing its cash and cash equivalents with high credit quality financial institutions.

Investments

Investments in fixed maturities (U.S. Government and corporate obligations) are carried at fair value, based on quoted market prices. The Trust accounts for its investments in accordance with accounting for *Investments – Debt and equity securities*. The Trust classifies all investments as available-for-sale, and as such these marketable securities are carried at fair value and unrealized holding gains and losses on investments are excluded from income and reported as a separate component of members' deficit until realized. Interest income is recognized when earned. Amortization of bond discount and premium is recorded using the straight line method over the period from purchase date to maturity. Net amortization of bond premiums and discounts resulted in a reduction of investment income of approximately \$17,000 and \$37,000 for 2011 and 2010, respectively. Realized gains and losses for investments are included in income and determined using the specific identification method.

The Trust follows the accounting for fair value measurements and disclosures for financial assets, which defines fair value and establishes a hierarchy for inputs used in measuring fair value. Investments are valued and carried at fair value on a recurring basis and at December 31, 2011 and 2010, are valued at Level 1 inputs (quoted prices in active markets for identical assets or liabilities).

**NY TRANSPORTATION
WORKERS' COMPENSATION TRUST
NOTES TO FINANCIAL STATEMENTS
December 31, 2011 and 2010**

NOTE 3 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Contributions

Contributions earned were computed on a pro rata basis over the term of the underlying insurance certificates. The Trust provided for contribution adjustments to its members based upon actual payroll information and accrues such contributions in the year billed. Amounts (refunded) received during the years ended December 31, 2011 and 2010 for payroll audits of previous years was approximately (\$11,900) and \$186,300, respectively.

Contributions receivable deemed uncollectable are written off to bad debt expense in the year they are deemed uncollectable. Bad debt recovery was approximately \$194,000 and \$63,000 for the years ended December 31, 2011 and 2010, respectively.

Loss and Loss Adjustment Expenses

The actuarially determined reserve for loss and loss adjustment expenses includes an amount determined from loss reports of individual cases and an amount for losses incurred but not reported. The Trust discounts its reserve for loss and loss adjustment expenses. Such reserves are necessarily based on estimates (and industry trends data) and, while management believes that the amount is adequate, the ultimate liability may vary significantly from the estimated amounts in these financial statements and could have a material effect on Members' deficit in future periods. The methods for making such estimates and for establishing the resulting reserve are continually reviewed, and any adjustments are reflected in operations in the year of the change.

The reserve for loss and loss adjustment expenses includes an amount for certain New York State assessments and charges.

New York State Assessments

On June 30, 2008, New York State promulgated comprehensive legislation over self-insured groups (the "2008 Legislation"), including changing the method of certain New York State Assessments for self-insured groups. The legislation stipulated that, effective January 1, 2009, assessments for certain sections of the Workers Compensation Law would thereafter be billed to self-insured groups based on paid indemnity claims.

Under the 2008 Legislation, New York State also stipulated that self-insured groups be billed for certain assessment sections based on a premium base. The premium base for self-insured groups who cease to self-insure was based on payroll at the time the group self-insurer ceased to self-insure reduced by a factor provided by New York State Workers Compensation Board, reflecting the reduction in the group's liabilities since ceasing to self-insure. An impact of the change on the December 31, 2009 financial statements was an increase to Accrued New York State Assessments and New York State Assessment expense to record a liability for these estimated future premium based assessments due to the run-off status of the Trust.

On April 1, 2011, New York State adopted legislation (the "2011 Legislation") that stipulated that, effective January 1, 2011, an inactive self-insured group in New York State would no longer be subject to the pure premium assessments. The impact to the Trust, as of and for the year ended December 31, 2010, was a reduction of Accrued New York State Assessments and New York State Assessment Expense of approximately \$27.3 million to eliminate the liability for these previously estimated future premium based assessments.

**NY TRANSPORTATION
WORKERS' COMPENSATION TRUST
NOTES TO FINANCIAL STATEMENTS
December 31, 2011 and 2010**

NOTE 3 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Income Taxes

The Trust follows guidance issued by the Financial Accounting Standards Board ("FASB") regarding accounting for uncertainty in income taxes. This guidance clarifies the accounting for income taxes by prescribing the minimum recognition threshold an income tax position is required to meet before being recognized in the financial statements and applies to all income tax positions. Each income tax position is assessed using a two step process. A determination is first made as to whether it is more likely than not that the income tax position will be sustained, based upon technical merits, upon examination by the taxing authorities. If the income tax position is expected to meet the more likely than not criteria, the benefit recorded in the financial statements equals the largest amount that is greater than 50% likely to be realized upon its ultimate settlement.

The Trust records income tax and related interest and penalties as components of the provision for income tax expense. In 2011, the trust reversed uncertain tax position liability of \$182,000 resulting in income tax recoveries of \$182,000. There was no interest or penalties recognized in 2011.

Income tax expense totaled approximately \$24,000 for the year ended December 31, 2010. Total amount of interest recognized in the statement of operations for the year ended December 31, 2010 was approximately \$24,000 which is included in income tax expense.

Deferred taxes are provided on the liability method whereby deferred taxes are recognized for deductible temporary differences and deferred tax liabilities are recognized for taxable temporary differences. Temporary differences are the differences between the reported amounts of assets and liabilities and their tax bases. Deferred tax assets and liabilities are adjusted for the effects of changes in tax laws and rates on the date of enactment.

Subsequent Events

In preparing these financial statements, management has evaluated events and transactions for potential recognition or disclosure through April 17, 2012, the date the financial statements were available for issuance.

NOTE 4 — NEW YORK STATE ASSESSMENT CREDITS

At December 31, 2011 and 2010, the Trust had overpayments for assessments to the New York State Workers Compensation Board of \$686,646 and \$677,601, respectively. Of these overpayments, approximately \$303,800 and \$44,400, as of December 31, 2011 and 2010, respectively, are assessed based on pure premium which the Trust is no longer subject to. The Trust has established a reserve of approximately \$151,900 as of December 31, 2011 due to uncertainty of collection. The related expense is included in the New York State assessment expense in the statement of operations.

**NY TRANSPORTATION
WORKERS' COMPENSATION TRUST
NOTES TO FINANCIAL STATEMENTS
December 31, 2011 and 2010**

NOTE 5 — INVESTMENTS AND RESTRICTED INVESTMENTS

The amortized cost, fair value and gross unrealized gains and losses of investments by major security type at December 31, 2011 and 2010 are as follows:

| | 2011 | | | |
|-----------------------------|---------------------------|---------------------------------------|--|-----------------------|
| | Amortized Cost | Gross Unrealized Gains | Gross Unrealized Losses | Fair Value |
| U.S. Government obligations | \$ 11,608,098 | \$ 1,316,811 | \$ - | \$ 12,924,909 |
| Corporate obligations | 2,756,780 | 210,717 | - | 2,967,497 |
| | <u>\$ 14,364,878</u> | <u>\$ 1,527,528</u> | <u>\$ -</u> | <u>\$ 15,892,406</u> |
| | 2010 | | | |
| | Amortized Cost | Gross Unrealized Gains | Gross Unrealized Losses | Fair Value |
| U.S. Government obligations | \$ 18,014,689 | \$ 1,480,749 | \$ - | \$ 19,495,438 |
| Corporate obligations | 5,432,655 | 404,852 | - | 5,837,507 |
| | <u>\$ 23,447,344</u> | <u>\$ 1,885,601</u> | <u>\$ -</u> | <u>\$ 25,332,945</u> |

Proceeds from the sale and maturity of investments were \$9,450,410 for the year ended December 31, 2011, resulting in gross realized gains of \$385,439 and no realized losses. Proceeds from the sale and maturity of investments were \$15,425,844 for the year ended December 31, 2010, resulting in gross realized gains of \$529,390 and realized losses of \$293.

The scheduled maturities of fixed maturity investments at December 31, 2011 are as follows:

| | Amortized Cost | Fair Value |
|--|---------------------------|-----------------------|
| Due within one year or less | \$ 2,140,431 | \$ 2,188,158 |
| Due after one year through five years | 8,301,251 | 9,155,455 |
| Due after five years through ten years | 3,259,250 | 3,839,024 |
| Thereafter | 663,946 | 709,769 |
| Total | <u>\$ 14,364,878</u> | <u>\$ 15,892,406</u> |

As discussed in Note 9, during 2011 and 2010, the Trust pledged \$1,125,000 of the above investments as collateral for the surety bond as of December 31, 2011 and 2010. Collateral is classified separately as restricted investments on the balance sheet.

**NY TRANSPORTATION
WORKERS' COMPENSATION TRUST
NOTES TO FINANCIAL STATEMENTS
December 31, 2011 and 2010**

NOTE 6 — RESERVE FOR LOSS AND LOSS ADJUSTMENT EXPENSES

The components of the reserve for loss and loss adjustment expenses at December 31, 2011 and 2010:

| | <u>2011</u> | <u>2010</u> |
|---|----------------------|----------------------|
| Reserve for reported losses | \$ 30,911,048 | \$ 33,199,418 |
| Reserve for incurred but not reported losses | <u>14,853,836</u> | <u>19,132,933</u> |
| Total reserve for loss and loss adjustment expenses | <u>\$ 45,764,884</u> | <u>\$ 52,332,351</u> |

To reflect the time value of money, the reserve for loss and loss adjustment expenses has been discounted using an interest rate of 1.75% and 2.75% at December 31, 2011 and 2010, respectively. The undiscounted reserve as of December 31, 2011 and 2010 was \$48,483,933 and \$56,944,203, respectively.

The reserve for loss and loss adjustment expenses includes approximately \$4,378,800 and \$5,171,600 related to New York State assessments for December 31, 2011 and 2010, respectively.

The following table presents an analysis of the reserve for loss and loss adjustment expenses, including an estimate of future losses and a reconciliation of beginning and ending reserve balances for 2011 and 2010. The reserve is stated on a net basis after deductions for losses recoverable from reinsurers and subrogation.

| | <u>2011</u> | <u>2010</u> |
|--|----------------------|----------------------|
| Discounted reserve for loss and loss adjustment expenses, beginning of year, gross | \$ 52,332,351 | \$ 56,111,560 |
| Less: reinsurance recoverable, beginning of the year | <u>(4,158,697)</u> | <u>(2,738,151)</u> |
| Discounted reserve for loss and loss adjustment expenses, beginning of the year, net | <u>48,173,654</u> | <u>53,373,409</u> |
| Incurring provision for loss and loss adjustment expenses | | |
| Increase in provision for insured events of prior years | <u>1,014,312</u> | <u>5,307,245</u> |
| | <u>1,014,312</u> | <u>5,307,245</u> |
| Payments | | |
| Loss and loss adjustment expenses attributable to insured events of prior years | <u>(9,138,213)</u> | <u>(10,507,000)</u> |
| | <u>(9,138,213)</u> | <u>(10,507,000)</u> |
| Discounted reserve for loss and loss adjustment expenses, end of year, net | 40,049,753 | 48,173,654 |
| Add: reinsurance recoverable, end of the year | <u>5,715,131</u> | <u>4,158,697</u> |
| Discounted reserve for loss and loss adjustment expenses, end of the year, gross | <u>\$ 45,764,884</u> | <u>\$ 52,332,351</u> |

Included in loss and loss adjustment expenses incurred in the statement of operations is subrogation received of \$2,195,640 and \$2,059,319 for the years ended December 31, 2011 and 2010, respectively.

**NY TRANSPORTATION
WORKERS' COMPENSATION TRUST
NOTES TO FINANCIAL STATEMENTS
December 31, 2011 and 2010**

NOTE 6 — RESERVE FOR LOSS AND LOSS ADJUSTMENT EXPENSES (Continued)

Effective January 1, 2009, the Administrative Agreement was amended to meet the needs of the Trust based on its voluntary termination of its status as a group self-insurer (Notes 1 and 2). The agreement calls for the Administrator to be paid for claims management on an annual fee per claim basis. The reserve for loss and loss adjustment expenses includes an estimate of the claims portion of the costs to administer the Trust after December 31, 2008 (the date group self-insurer status was terminated).

NOTE 7 — INCOME TAXES

The provision for income tax (benefit) expense consists of the following:

| | <u>2011</u> | <u>2010</u> |
|--------------------------------|---------------------|------------------|
| Current | | |
| Federal | \$ (72,315) | \$ 16,500 |
| New York State Franchise taxes | (109,685) | 7,425 |
| | <u>\$ (182,000)</u> | <u>\$ 23,925</u> |

The reconciliation of income taxes calculated at the Federal tax statutory rate to the Trust's effective rate is set forth below:

| | <u>2011</u> | | <u>2010</u> | |
|--|---------------------|-------------|------------------|------------|
| | \$ | % | \$ | % |
| Tax at federal statutory rate | \$ (252,116) | 34% | \$ 7,327,886 | 34% |
| New York State Franchise Tax | - | 0% | - | 0% |
| Valuation allowance (reductions) additions | 289,116 | (39%) | (8,408,400) | (39%) |
| Other | (37,000) | 5% | 1,080,514 | 5% |
| Adjustment for uncertain tax positions | (182,000) | (1%) | 23,925 | -1% |
| | <u>\$ (182,000)</u> | <u>(1%)</u> | <u>\$ 23,925</u> | <u>-1%</u> |

The details of deferred tax assets are set forth below:

| | <u>2011</u> | <u>2010</u> |
|--|--------------|--------------|
| Deferred tax assets: | | |
| Net operating loss carryforwards | \$ 9,083,000 | \$ 8,853,000 |
| Reserve on New York State Assessment Credits | 59,000 | - |
| Gross deferred tax asset | 9,142,000 | 8,853,000 |
| Deferred tax asset valuation allowances | (9,142,000) | (8,853,000) |
| Deferred tax assets | <u>\$ -</u> | <u>\$ -</u> |

**NY TRANSPORTATION
WORKERS' COMPENSATION TRUST
NOTES TO FINANCIAL STATEMENTS
December 31, 2011 and 2010**

NOTE 7 — INCOME TAXES (Continued)

For the year ended December 31, 2011, the valuation allowance was increased by \$289,000. At December 31, 2011, the Trust has net operating losses (NOL's) carryforwards of approximately \$23.3 million available to offset future taxable income. Deferred tax assets at December 31, 2011 and 2010 have been fully offset by a valuation allowance due to the uncertainty as to their realizability. The NOL's begin to expire in 2028.

None of the Trust's federal or state income tax returns is currently under examination by the Internal Revenue Service ("IRS") or state authorities. However years 2008 and later remain subject to examination by the IRS and respective states.

NOTE 8 — EXCESS INSURANCE

The Trust through the Administrator, has obtained specific and aggregate excess insurance from an outside carrier for each policy year of the Trust. Under this arrangement, the Trust's losses in excess of approximately \$5,450,000 to \$36,850,000 in aggregate or \$300,000 to \$750,000 per accident per insured will be covered by the excess insurance depending on the policy year's coverage.

In the event the Trust's excess insurer is unable to meet its obligations under the excess insurance agreement, the Trust would continue to have primary liability to members for losses incurred.

NOTE 9 — COMMITMENTS AND CONTINGENCIES

Management Agreement and Commissions

The Trust entered into an Administrative Agreement with a third-party administrator ("Administrator"), which expired December 31, 2011. Effective January 1, 2009, the Administrative Agreement was amended to meet the needs of the Trust based on its terminated status (Note 1). The agreement called for the Administrator to be paid for claims management on an annual fee per claim basis. The reserve for loss and loss adjustment expenses included an estimate of the claims cost portion of the dissolution costs. Administrative services relating to accounting and billing services performed during the run off period were billed to the Trust on an hourly basis. The Trust incurred management fees and commission expense of \$728,747 and \$749,021 for the years ended December 31, 2011 and 2010, respectively.

The Trust entered into a new administrative agreement with a new TPA effective January 1, 2012, on similar terms and conditions, for a three year term.

Surety Bond

As is customary in a workers' compensation regulatory structure, the Trust is required to provide a surety bond (the "Surety Bond") to the Trust's state regulator as a condition to conducting workers' compensation business in the State. Accordingly, the Trust is the principal on a Surety Bond Pledged to the State of New York in the amount of \$1,125,000. Should the State have to draw on the Surety Bond, the Trust is obligated to reimburse the surety company for any losses and costs incurred by them, up to the maximum amount of the Surety Bond. The Trust pledged \$1,125,000 in investments as collateral for the surety bond during 2011 and 2010.

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NOTE 9 — COMMITMENTS AND CONTINGENCIES (Continued)

Indemnity Agreement

The Trust has entered into an indemnity agreement with each member to provide risk management services and workers' compensation and employer's liability coverage. The agreement stipulates, among other things, that each member is jointly and severally liable for the workers' compensation and employer's liability obligations of the Trust and its members which were incurred during the member's period of membership in the Trust, irrespective of the subsequent termination of the member's membership in the Trust, the insolvency or bankruptcy of another member of the Trust, or other facts or circumstances. However, recourse for any and all payments of workers' compensation and employer's liability benefits covered by the Trust's certificate of coverage to a member shall first be made from the Trust's assets.

New York State Assessments

Under New York State regulatory laws, the Trust is required to pay for its share of various assessments to the Workers' Compensation Board (the "WCB") for certain obligations, including but not limited to the costs of the WCB's operations, and defaulted self-insurers. Through an assessment under Section 50-5 of the New York State Workers' Compensation Law, the WCB had taken the position that the Trust is obligated to contribute a share of anticipated losses of self-insurance groups that are in default, have closed or have otherwise failed to meet their obligations. The WCB has not declared that there is any limit to the Trust's potential assessments for such failed self-insurance groups. An estimated reserve for the Trust's exposure to the anticipated losses of the defaulted trusts has been included in the reserve for loss and loss adjustment expenses. The Trust's Board is currently challenging the WCB's authority to assess the Trust for its share of the liabilities of the defaulted trusts through various judicial actions.

The 2008 Legislation stipulated that all trusts, both active and inactive, pay certain premium based assessments during any State fiscal years in which the trust made indemnity claim payments. An accrual for the future premium based assessments was recorded in the financial statements as of December 31, 2009. The Trust paid the premium based assessments during its initial two years of being inactive (2009 and 2010). The Trust challenged the WCB's assessment on an inactive self-insured trust for the premium based assessments in the Supreme Court of New York State in three separate actions. On April 14, 2010, an acting State Supreme Court Justice ruled in the first action that the assessments billed since 2007 under section 50-5 to self-insured trusts to cover the anticipated losses of other self-insured trusts that are in default, have closed or have otherwise failed to meet their obligations, to be unconstitutional, and to permanently enjoin the WCB from enforcing those assessments. On April 21, 2011, the Appellate Division Third Judicial Department reversed the 2010 ruling, and the court declared that the assessments billed were not unconstitutional. All appeals have been exhausted.

The Trust has also challenged the premium based assessments in two separate special proceedings actions against the WCB. The trial court ruled against the Trust in the first action, instituted in 2009, and the Trust has appealed to the Appellate Division. In the second action, the trial court ruled in favor of the Trust on July 27, 2011, and the WCB has notified the Appellate Division of its intent to appeal, which has not yet been perfected. The Trust's judgment in this action has not been reflected as an asset in the accompanying financial statements because the outcome is still uncertain. Because of the 2011 Legislation, there are no premium based assessments to challenge after January 1, 2011.

**NY TRANSPORTATION
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NOTE 10 — RELATED PARTY TRANSACTIONS

All Trustees on the Board were employed by covered members of the Trust. Each Trustee receives a nominal fee for serving on the Board; during 2011 and 2010, these fees totaled \$87,000 and \$82,000, respectively. Trustees are also reimbursed for travel costs incurred to attend the meetings.